



U.S. Citizenship
and Immigration
Services

LA

[REDACTED]

FILE:

[REDACTED]

Office: Los Angeles, California

Date:

OCT 13 2004

IN RE: Applicant:

[REDACTED]

APPLICATION:

Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the Los Angeles District Office. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent disclosure of warranted
invasion of personal privacy

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director in Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

The district director concluded that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in this country in an unlawful status from then through May 4, 1988.

On appeal the applicant resubmitted photocopies of the documentation he had previously submitted, along with a brief signed by [REDACTED] of an organization called Hermandad Mexicana Nacional. Though she stated in her brief that she was submitting a Form G-28, Notice of Appearance, no such form accompanied the brief. The appeal form filed by the applicant (Form I-290B) provides that an attorney or representative must attach a Notice of Entry of Appearance (Form G-28) if no such form was submitted previously. In fact, the record already included a Form G-28, filed by [REDACTED] in 1999, which is still valid. Therefore, a copy of this decision will be sent to [REDACTED]

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in one of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (“CSS”), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (“LULAC”), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (“Zambrano”). See section 1104(b) of the LIFE Act and 8 C.F.R. § 245a.10. The record indicates that the applicant filed a timely written claim for class membership in CSS.

An applicant for permanent resident status under section 1104 of the LIFE Act must also establish that he or she entered the United States before January 1, 1982 and resided in this country continuously in an unlawful status from before January 1, 1982 through May 4, 1988. See section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods. . . . The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.” As explained in *Matter of E-M-*, 20 I & N Dec. 77, 80 (Comm. 1989), “when something is to be established by a preponderance of the evidence it is sufficient that the proof only establish that it is probably true.” The decision went on to declare that, in the absence of contemporaneous documentation, affidavits are “relevant documents” which warrant consideration in legalization proceedings. *Id.* at 82-83. Preponderance of the evidence has also been defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979).

In the Form I-687, Application for Status as a Temporary Resident, and the Form for Determination of Class Membership in *CSS v. Meese* (“CSS class membership form”) which he filed with the Immigration and Naturalization Service (INS) in connection with his class membership claim, both dated December 10, 1989, the applicant declared that he (1) first entered the United States on November 27, 1981, (2) lived at three different addresses in the Los Angeles metropolitan area over the next eight years (19962 [REDACTED] in Canoga Park, CA, from December 1981 to May 1984, [REDACTED] A, from May 1984 to June 1988, and [REDACTED] in Hollywood, CA, from July 1988 to December 1989), and (3) departed the United States twice during that time period to visit family in his native India – the first time from May to June 1987 and the second time from June 18 to July 30, 1988.

In June 1999 the applicant submitted a legalization questionnaire to the Immigration and Naturalization Service (INS) in Washington, D.C. in which he stated that he attempted to file a legalization application during the original filing period in 1987-88, but that an INS officer in Los Angeles refused to accept (*i.e.*, "front-desked") the application. Submitted along with the questionnaire was a declaration by Jared Ali, a U.S. citizen residing in Stevenson Ranch, California, dated June 4, 1999, who stated that he had known the applicant since November 1981 and that he accompanied the applicant when he was "front-desked" by the INS office in Los Angeles in October 1987.

When he filed his LIFE application (Form I-485) in May 2002 the applicant submitted a series of declarations in identical format from five individuals in the Los Angeles area [redacted] his wife [redacted] each of whom stated that they had "personal knowledge" that the applicant had been living in the United States since before January 1, 1982, that the applicant had been "turned away" when he tried to file a legalization application in 1987, and that the applicant had maintained "continuous physical presence" in the United States between November 6, 1986 and May 4, 1998 (as required by section 1104(c)(2)(C)(i) of the LIFE Act). A sixth declaration, from [redacted] [redacted] varied from the others in that he indicated he first met the applicant at his auto body shop in July 1986 and the applicant has remained a customer ever since. In addition, a sworn affidavit was submitted from [redacted], declaring that she and the applicant "met in July 1986 at the [redacted] temple during a religious ceremony and . . . have continued our friendship since then." Following the applicant's second interview with the INS concerning his LIFE application in December 2003 new statements were submitted by six of these seven individuals which provide more detail about their knowledge of and relationship with the applicant during the 1980s and beyond. The new statements include:

- 1) A statement by [redacted] a resident of S. Pasadena, California, dated December 18, 2003, declaring that he and the applicant "met in December of 1981 at a function for international students and friends at the University of Southern California while I was taking my Master's Degree in Training and Human Resource Development. . . . We kept in touch after my graduation and met regularly through the 1980s on a social basis. We had many common interests including spiritual and healthcare philosophies that we shared. [The applicant] was acquainted with my wife's family and we usually spent time together at holidays at the home of my wife's sister. In the mid-1990s we began a business relationship . . ."
- 2) A statement by [redacted] a resident of S. Pasadena, California, dated December 18, 2003, declaring that "I became acquainted with [the applicant], at first, through my husband [redacted] when he was in college at U.S.C. (1980-1982). There were many dinners and events so students could meet each and we went to [the applicant's] house one time for dinner. [The applicant] was always a hard worker and looking for different kinds of business opportunities. . . . I introduced [the applicant] to [my sister, whose] company was active in property development, renovation and construction. Over the next ten years our families would get together for parties, barbecues and at the holidays . . ."
- 3) A statement by [redacted] a resident of Los Angeles, California, dated December 20, 2003, declaring that "I first met [the applicant] in the summer of 1986 when he came to my auto body shop. We found a common ground in matters of religion and philosophy, and later, filmmaking. On several occasions I welded his braces (as well as his car) . . . Over the years . . . [w]e'd often go to movies together or he'd come by my auto shop and ask me a question about his car, or just to enjoy a conversation." [redacted] went on to state that the applicant provided helpful advice in helping him change careers and become a filmmaker.

- 4) A statement by Jesus Becerra, a resident of Alhambra, California, dated December 21, 2003, declaring that his "first meeting with [the applicant] took place at a Christmas party in 1981 in Los Angeles where my family and my sister-in-law were also present. [The applicant] and I hit it off and . . . became good friends. We have visited each other on many occasions."
- 5) A statement by [REDACTED] a resident of Alhambra, California, dated December 21, 2003, declaring that "I first met [the applicant] at a Christmas party in 1981 in Los Angeles with my sister and our families. . . . I remember that [the applicant] was trying to get admission in a college to study computers. . . . My husband and I invited [the applicant] to our home for New Year's Eve that year and every year since then."
- 6) A statement by [REDACTED] a resident of Tujunga, California, dated December 21, 2003, declaring that "I first met [the applicant] in July 1986 at the [REDACTED] and Study Center during a cultural event. We attended this particular center regularly when I lived in Pasadena. . . . [The applicant] was very helpful in suggesting books and various materials to read and study. We often went to the Bodhi Tree book store on Melrose Avenue in Los Angeles. . . . Over the years [the applicant] has become part of our extended family. . . . [The applicant] also works with my husband and sons . . . on various music video projects."

In her decision the district director indicated that Citizenship and Immigration Services (CIS), successor to the INS, had contacted the six affiants above to verify their information. Two of them – Jesus Becerra and [REDACTED] failed to return telephone calls to CIS. There is no indication that CIS followed up on these inquiries. The other four affiants – [REDACTED] – were interviewed by telephone or in person. Though the information they provided – as recorded by the interviewers – appears to have been rather sparse, none of it conflicted with their written statements.

In her decision the district director stated that the applicant provided two different versions in his LIFE interviews of how he first entered the United States across the U.S.-Canadian border in November 1981. According to the interviewer's notes, the applicant stated in his first interview, on November 4, 2003, that he drove across the U.S.-Canadian border from British Columbia into Washington, then continued on to Los Angeles and moved in with a friend, [REDACTED]. In his second interview, on December 18, 2003, the interviewer's notes indicate that the applicant walked across the U.S.-Canadian border through a strawberry field and was picked up in the nearby town of Blaine, Washington, by [REDACTED] who drove him to Los Angeles and housed him for awhile. The district director points out, correctly, that "[t]he testimonies provided at the interviews appear to be inconsistent." The applicant did not sign or otherwise acknowledge either of the memoranda prepared by the interviewers, however, which raises the possibility that their notes might contain inaccuracies. Moreover, the two accounts are not entirely in conflict, since at both interviews the applicant indicated that he crossed the U.S.-Canadian border from British Columbia, drove from northern Washington to Los Angeles, and moved in with his friend, [REDACTED]. In a declaration he submitted after receiving the notice of intent to deny, dated February 17, 2004, the applicant restated the account he gave in his second interview that he walked across a strawberry field from Canada into the United States and was picked up by his friend, [REDACTED] in Blaine, Washington.

In her decision the district director cited the I-687 and CSS class membership forms the applicant filed on December 10, 1989, in which the applicant declared that since his entry into the United States he had departed twice on trips to India – in 1987 and 1988. According to the district director this information conflicts with information in a letter from the applicant's mother, dated May 15, 1999, in which she wrote that the applicant had visited India five times between 1981 and 1999. There is no conflict in this documentation, however, because the applicant's mother states in her letter that the applicant's first two visits to India were in 1987 and 1988, while the next three visits were in 1990, 1994, and December 1997-January 1998. Far from conflicting with the applicant, therefore, the mother's letter corroborates his assertion that as

of December 1989 (when his I-687 and CSS class membership forms were prepared) he had traveled to India just twice since his entry into the United States. Moreover, only the 1987 trip occurred during the time period required for continuous U.S. residence under the LIFE Act – January 1, 1982 to May 4, 1988 (the 1988 trip having occurred in June and July of that year).

As additional evidence of the applicant's conflicting testimony the district director cited the first LIFE interview on November 4, 2003, at which "you stated that you had left the United States seven times between 1981 and 1988 to visit India." The interviewer's notes state that the applicant "left the U.S. seven times during 1981 to 1988," but do not indicate that all those departures involved visits to India. The interviewer's notes (as previously mentioned, uncorroborated by the applicant) conflict with all of the other declarations in the file. Only two departures from the United States between 1981 and 1988, both to India, were declared by the applicant on his I-687 and CSS class membership forms in 1989. The applicant's mother, in her 1999 letter, also mentioned just two visits to India in the 1981-1988 time frame. In his second LIFE interview, on December 18, 2003, the applicant restated that he made two trips to India between 1981 and 1988. In his declaration of February 17, 2004, responding to the notice of intent to deny, the applicant confirmed that he visited India five times between 1981 and 1999 – in 1987, 1988, 1990, 1994, and December 1997 (to January 1988) – and also stated that he made trips to Germany in August 1996 and to Canada in August 1999. That makes a total of seven departures from the United States – the number cited in the decision – but they were over a time span ending in 1999 rather than 1988 and included destinations other than India. It seems possible that the interviewer's notes were mistaken about the time frame of the applicant's departures from the United States, or that the applicant misspoke in the first interview.

In the AAO's judgement, the conflicts in the applicant's written and oral testimony are not weighty enough to fatally undermine his credibility. After reviewing all of the evidence in this case, and conceding that the issue of the applicant's continuous U.S. residence during the statutorily required time period is not without doubt, the AAO concludes that the applicant has met his burden of proof. The AAO determines that the applicant has established, by a preponderance of the evidence (*i.e.*, it is more probable than not), that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required by section by 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.